

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

January 28, 2003

Chairman Michael Powell
Commissioner Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street SW, Portals II Building
Washington, D.C. 20544

Ex Parte Letter –*In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).

Dear Commissioners:

I am writing to express my support for the November 20, 2002, letter from NARUC regarding the continued role of state regulatory commissions in establishing a list of unbundled network elements (“UNE”) for our respective states. Due to a related docket pending at the Tennessee Regulatory Authority (“TRA”), it would be inappropriate for me to express an opinion either endorsing or opposing the UNE platform (“UNE-P”). However, I believe it is incumbent upon me as a state official to support the continued involvement of state regulatory commissions as required by both federal and state law and judicial decisions.

In passing the historic 1996 Telecommunications Act, Congress recognized the essential role of the states in achieving the explicit goals of the Act. The Act is replete with references to the authority of state commissions and the preservation of state policies (i.e. §251(d), 252(e), §254(f)). The FCC has continuously recognized the importance of the role of state commissions. For example, the FCC’s original UNE order (Docket 96-325, August 1, 1996) stated:

[T]he Commission concludes that the states and the FCC can craft a partnership that is built on mutual commitment to local telephone competition throughout the country, and that under this partnership, the FCC establishes uniform national rules for some issues, the states, and in some instances the FCC, administer these rules, and the states adopt additional rules that are critical to promoting local telephone competition. The rules that the FCC establishes in this Report and Order are minimum requirements upon which the states may build.

The TRA has worked diligently to adopt policies that have helped create a pro-competitive environment in Tennessee. This is evidenced by the fact that 32 facilities-based CLECs are serving 458,000 lines in Tennessee. These 32 CLECs report that they have invested \$650 million in Tennessee since 1996. Tennessee's pro-competitive policies are the result of progressive legislation by the Tennessee General Assembly and thorough legal, economic and technical analyses of Tennessee's telecommunications markets conducted in contested case proceedings with testimony, cross-examination and legal briefs by interested parties.

I applaud the FCC's efforts to take a more granular approach in applying the necessary and impair standard and believe that state commissions are in the best position to conduct such an analysis. The TRA has conducted generic hearings on UNE prices, UNE terms and conditions, and line sharing in addition to arbitrating more than one hundred UNE disputes. Our knowledge of the in-depth market conditions within our states allow for the type of analysis necessary to formulate the pro-competitive policies envisioned by Congress and the FCC.

There have been and will continue to be situations in which the states need to supplement FCC decisions in order to achieve pro-competitive policies across the country. A specific Tennessee example involves the FCC order which applies minimum UNE standards in the nation's 50 most populous metropolitan areas. While Nashville and Memphis, Tennessee's two largest cities, are among the 50 most populous metropolitan areas, they are not densely populated in comparison with other MSAs because of the large geographic area of the two cities. Neither Nashville nor Memphis is among the top 50 MSAs in population per square mile. Since competitors generally operate in the most densely populated areas to take advantage of economies of scale, a policy that does not consider population density would be incomplete for Tennessee and possibly other states, especially in the Southeast.

I urge the FCC to continue to recognize the authority given to state regulators as envisioned by Congress and to continue the successful Federal/State partnership we have forged to achieve the ultimate goals of the Telecom Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah Taylor Tate", with a stylized flourish at the end.

Deborah Taylor Tate
Director

DTT:met

c: James B. Ramsay, NARUC